

## GENERAL TERMS OF SERVICE

*Latest version dated 28 July 2022*

The purpose of the present General Terms of Service is to define the terms and conditions for the provision and use of OVHcloud Services.

These General Terms of Service form, together with the applicable Specific Terms of Service and all of the documents which they make reference to, constitute a single contract (hereafter the 'Contract') between OVH Australia PTY LTD (Australian Company Number 612 612 754, LEVEL 12, 90 ARTHUR STREET NORTH SYDNEY NSW 2060), and any physical or legal person, consumer or business, governed by private or public law, creating a Client Account on the OVHcloud Website (hereafter known as the "Client"). The Client and OVHcloud are individually and jointly known as the "Party" or "Parties", respectively.

Expressions beginning with an upper-case letter are defined within the present General Terms of Service.

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### 1. ORDERING SERVICES

**1.1. Client Account.** To be able to order OVHcloud Services, the Client must have a valid Client Account. The Client creates its Client Account online within the OVHcloud Website. The Client shall provide all the required information (email address, name, address, bank details, etc.), and undertakes that all of the information thus provided is correct and up to date throughout the entire duration of the Contract. When a Client Account is created and used by a third party, such person shall be considered as acting in the name and on behalf of the Client, and having full power and authority to enter into and perform this Contract on behalf of the Client.

**1.2. Activation of the Client Account.** Prior to the activation of the Client Account, as well as at any time while the Contract is in effect, OVHcloud reserves the right to verify the accuracy of the information sent by or for

the Client Account, and to request supporting documents from the Client. OVHcloud reserves the right not to activate, or to deactivate, the Client Account in the event that any of the information provided by the Client is incomplete, inaccurate, or fraudulent.

**1.3. Orders.** Once its Client Account has been activated by OVHcloud, the Client can order Services.

Depending on Services, Orders can be sent using the OVHcloud Website and/or directly using the Client's Management Interface and/or using an API which OVHcloud may provide for said purpose. The Client is solely responsible for the management of its Client Account and associated authentication credentials (user names, passwords, etc.). Any Order sent from the Client Account is deemed to have been submitted by the Client, is binding on the Client and agree to be bound by the Terms of Service. The terms and timescales for the provision of Services vary depending on the Service ordered. Some Services are made available only upon receipt by OVHcloud of payment from the Client in advance for the relevant Services. It is the responsibility of the Client to ensure that the delivery terms for the ordered Services meet its needs.

## 2. SERVICES

**2.1. Applicable Terms of Service.** The provision and use of the Services are governed by these Terms of Service, the Specific Terms of Services applicable to the selected Services, any other conditions referred by the General Terms of Services and Specific Terms of Service, such as Third Party Product Terms of Use, along with any other information given to the Client during the Order ("Terms of Service"). The use and/or the download of Third Party provided by OVHcloud in the provision of the Services constitutes acceptance of the Third Party Product Terms of Use in accordance with Article 3.11. The Specific Terms of Service, and the Third Party Product Terms of Use supplement these General Terms of Service. In the event of contradiction, the Specific Terms of Service, as well as the General Terms of Service, shall prevail over the Third Party Product Terms of Use. The Terms of Service in effect are available on the OVHcloud website, or may be sent to the Client upon request addressed to OVHcloud Support. The Terms of Service may vary depending on the country where the Services are located and the local laws that will be applicable.

**2.2. Information related to the Services.** OVHcloud makes available to the Client via the OVHcloud Website, online resources which enable the Client to be informed of the characteristics of the Services offered. These resources may include, in particular, (a) information regarding various available features, configurations, options and ranges and (b) documentation, technical guides and/or examples (or use cases) on using the Services so as to facilitate better understanding and use of the Services. The Client may obtain additional information regarding the Services by contacting OVHcloud Support in accordance with article 4 below. In cases where OVHcloud offers Services which comply with known standards or specific regulations which apply to certain activities, OVHcloud shall communicate its scope of responsibility as well as the conditions in which OVHcloud complies with said standards or regulations.

**2.3. OVHcloud commitments and obligations.** OVHcloud undertakes to exercise reasonable care and skill in providing Services in accordance with the characteristics, terms and levels of Service stated in the Contract. In particular, OVHcloud agrees to exercise reasonable skill and care in keeping in place a competent team responsible for assisting the Client and handling Incidents ("OVHcloud Support") and ensuring the availability and security of Services in accordance with the applicable terms and performance levels. OVH is subject to an obligation of means.

**2.4. Subcontracting.** Subject to the legal and contractual provisions applicable in matters of privacy and personal information, OVHcloud may subcontract all or part of the Services to its Affiliates. Within the scope of the Contract, OVHcloud may freely recourse to Third-Party Providers, without having to inform the Client or

solicit it prior approval. However, subject to contradictory provisions of Specific Terms of Service in effect or Client's specific agreement, no performance implying access to the Content stored by the Client within the scope of the Services shall be subcontracted outside of OVHcloud Group. OVHcloud shall in all cases remain primarily liable for the provision of the subcontracted Services.

### 3. TERMS OF USE OF THE SERVICES

- 3.1. Compliance with the Terms of Service.** The Client agrees to order and use the Services in accordance with the Terms of Service in effect. The Services must be used in good faith. In particular, the Client undertakes to comply with these General Terms of Service, the Specific Terms of Service and the applicable Third Party Product Terms of Use, as well as any information communicated to the Client at the time of the Order. When using the Services on behalf of a third party, or authorizing a third party to use the Service and before any use of the Service(s) by such third party, the Client undertakes to communicate and to validate the relevant terms to that third party and guarantee compliance of the Terms of Service by the relevant third party.
- 3.2. Selection of Services.** Before ordering and using the Services, the Client shall familiarize itself with all of the applicable Terms of Services (in particular, the Specific Terms of Service and the Third Party Product Terms of Use), and study all of the documentation, configuration, options and ranges of services available, in order to select Services and characteristics suited to the Client's needs and those of the third parties for whom or on whose behalf the Services will be used. In particular, the Client shall verify that the Services are suited to the legal and regulatory requirements applicable to the activities performed within the scope of the use of the Services. In order to obtain any additional information regarding the Services, the Client may contact OVHcloud Support as set out in article "OVHcloud Support" hereafter. The terms and characteristics of the Services shall be updated regularly. The Client is responsible to take note of these updates, particularly when placing new orders.
- 3.3. Connection.** To use the Services, the Client must ensure that it has access to a remote connection (such as the Internet or a private network), which it is solely responsible for and bears the costs of. The Client is hereby informed that the Internet presents technical hazards and security risks that are external to the technical measures employed by OVHcloud in the provision of the Services. OVHcloud shall not be held liable for any faults by Internet access providers or other third party data transport networks (including but not limited to lack of reliability of connection lines, bandwidth fluctuations, connection interruptions, etc.), nor for the consequences of said faults, particularly in cases when they result in the unavailability or discontinuity of the Services.
- 3.4. Means of authentication.** The Client is responsible for the management and confidentiality of the necessary means of authentication for connecting to and using the Services. The Client shall ensure that the Users are knowledgeable of and follow standard practices which enable them to maintain the confidentiality of their authentication credentials. The Client is solely responsible for any consequences which may arise from the loss, disclosure, or fraudulent or illicit use of the authentication credentials provided to Users. OVHcloud shall in no way be held liable in this regard. The Client undertakes to immediately inform OVHcloud of any loss or disclosure of any authentication credentials, and immediately proceed with changing said authentication credentials.
- 3.5. Content.** With the exception of items provided by OVHcloud, OVHcloud does not intervene in the handling of the Content and is forbidden from accessing said Content for any other purpose than as necessary for the execution of the Services. OVHcloud does not perform any verification, validation or update operations on said Content. Likewise, OVHcloud does not perform any particular backups of Content stored in the scope of the Services. Therefore, the Client is solely responsible for taking all necessary

measures to safeguard its data in order to protect it against risk of loss or degradation regardless of cause. The Client shall ensure that the Content is legal and used in accordance with applicable industry standards, laws and regulations. Any use of illegal or fraudulent Content (such as the distribution, publication, storage or transmission of content of sexually explicit material, content that is obscene, offensive, hateful or inflammatory, incites crimes against humanity, acts of terrorism, paedophilia, anti-Semitism, racism, or content inciting hatred or discrimination towards individuals by reason of their gender, religion, sexual orientation or identity, or disability), or the illegal or abusive use of Content (for example, fraudulent use of content, or use of content in violation of rights belonging to a third party such as personality rights, copyrights, patents, brands or other intellectual property rights) within the scope of Services is prohibited, and can lead to, in accordance with the provisions of the Contract, the immediate suspension of all or part of the Services provided under the Contract, the deactivation of the Client Account and/or the termination of the Contract by OVHcloud, without prejudice to OVHcloud's other rights and remedies under the Contract or at law.

**3.6. Compliance with laws and regulations – Prohibited activities.** The Services shall be used in a reasonable manner, pursuant to all applicable laws and regulations. The Client undertakes to keep abreast of any updates or changes to laws, regulations or documentation provided by OVHcloud. Explicitly forbidden actions include, but are not limited to, (a) abuse, fraudulent or excessive use of the Services and resources made available to the Client, particularly any use of a nature that threatens the stability and security of OVHcloud systems or which can result in a degradation of the Services performance provided to other OVHcloud clients, (b) intrusions or intrusion attempts launched from the Services (including, but not limited to, port scanning, sniffing, spoofing, and more generally, attacks on external parties originating from resources made available by OVHcloud) except Penetrating Tests specifically authorized by OVHcloud pursuant to these General Terms of Service, (c) any use or attempted use of spam or any other similar technique, and (d) use of illicit or prohibited Content as specified in article 3.5 “Content”. For clarity sake, crypto currency mining, denial of service attacks, spamming, or any other activity designed to, or capable of disrupting, damaging or limiting the functionality of any Services are strictly prohibited. This does not affect the Client’s right to use consensus mechanisms such as “proof of stake” to verify transactions in the blockchain, provided always such mechanism does not fall under the restriction set forth in paragraph (a) above.

**3.7. Suspension of Services.** OVHcloud reserves the right to suspend all or part of the Services in the event of (a) a known risk to the stability and/or security of the OVHcloud systems or environment by the Services and/or Client Content, (b) scheduled maintenance, or (c) a request issued by a legal authority or competent judicial authority (d) notification by a third party in accordance with applicable laws (e) noncompliance of the Client with all or part of the Terms of Services. Said suspension may occur immediately and without prior notice in case of urgency or necessity, and particularly in the case of an event such as described in point (a) and (c) above, or in case of illicit or fraudulent use of the Services, or use that is in violation of the rights of a third party, and more generally, of any use which may bind the liability of OVHcloud. Except in relation to cases of judicial or legal requisitioning or noncompliance with the Terms of Services, OVHcloud shall endeavour to minimise the impact of a suspension on the normal operations of the Services. Any such suspensions shall in no way release the Client from its obligation to pay the entirety of the amounts due to OVHcloud under the Contract, which is without prejudice to the Client’s right to engage OVHcloud’s liability in accordance with article “Liability” hereafter in case such suspensions result from OVHcloud’s failure to fulfil its obligations. The Client can consult the maintenance schedule using the interface provided for this purpose. In the event any such suspension results in a failure by the Client to fulfil its obligations under the Contract, the suspension shall take place without prejudice to OVHcloud’s right to terminate the contract in accordance with article “Duration, Renewal and Termination of Services” hereafter, and without prejudice to OVHcloud's other rights and remedies at law. Except in cases of termination or nonrenewal of Services, suspensions of Services shall not result in

the deletion of the Client's data. Unless suspensions result exclusively of OVHcloud's failure to fulfil its obligations, the duration of the aforementioned suspensions shall not count as unavailability of Services in respect with the service level agreement provided in the Agreement.

**3.8. Updates to Services.** OVHcloud may modify the Services at any time, and may add, modify or remove ranges, options or features, as well as upgrade their performance. The Services are described online on the OVHcloud Website. The Client is responsible for keeping abreast of any updates to the Services, which are immediately applicable to any new Orders. Concerning the Services in use by the Client, the latter shall be informed by email or via its Management Interface of any substantial updates which are of a nature to downgrade said Services, at least seven (7) calendar days before the implementation of said update. Nevertheless, modifications to Third Party Products and urgent cases (such as security risks, or legal or regulatory compliance updates) may result in immediate modifications to the Services. To the extent permitted by the law, in case of an update that degrades existing Services in use by the Client (removal of functionality, performance downgrade, etc.), the Client may terminate the relevant Services by registered letter with acknowledgment of receipt, or through a specific form provided in its Management Interface, within thirty (30) days from the date the relevant update is implemented.

**3.9. Intellectual property. Usage rights.** All of the items (software, Infrastructure, documentation, etc.) made available to the Client by OVHcloud in the provision of the Services and during the term of the Contract remain the exclusive property of OVHcloud or the third parties which have granted the rights to use them. OVHcloud grants the Client a non-exclusive licence to use the items made available to it only in accordance with and for the duration of the present Contract. With the exception of the aforementioned items made available to the Client by OVHcloud in the provision of the Services, the Client remains solely responsible for acquiring all of the authorisations and usage rights for the elements and Content (data, software, applications, systems, websites, etc.) which it uses and operates in relation to the Services. The Client and Users retain all intellectual property rights in their respective Content which OVHcloud shall not use except to the extent necessary for the performance of the Services. Subject to mandatory legal provisions in effect, the Client is not authorized to decompile the software, source code and algorithms used in the course of supplying the Services, notably to reverseengineer.

**3.10. Compliance with Sanctions.**

3.10.1. The Client shall at all times comply with Sanctions.

The Client represents and warrants that:

- a) it is not, and was not previously, a person which has been designated under, targeted by, or otherwise subject to, any Sanctions;
- b) it is not owned or controlled by, or acting for or on behalf of, an individual or entity which has been designated under, targeted by or otherwise subject to, any Sanctions; and
- c) the Services will not be sold, exported, diverted or otherwise transferred to any individuals or entities located in countries or regions subject to comprehensive Sanctions or trade embargoes, to the governments of any of these countries or regions, or to any person or entity that is otherwise targeted by Sanctions laws, or to any person or entity that is directly or indirectly involved in acts of terrorism, or in connection with weapons of mass destruction or missile applications; and
- d) it will not use, deal with, sell, supply, transfer or export, or broker the use, dealing with, sale, supply, transfer or export of the Services in a manner that would otherwise violate Sanctions.

3.10.2. The Client shall inform OVHcloud immediately if any of the representations and warranties in this clause cease to be accurate in any respect at any time during the term of this Contract.

3.10.3. OVHcloud is not obliged to perform any obligation under this Contract to the extent that the performance of such obligation would breach Sanctions applicable to OVHcloud or expose OVH to any

risk of enforcement action or punitive or restrictive measures or other adverse action under Sanctions.

3.10.4. In the event that:

- a) the Client breaches any provisions of this clause;
- b) the representations and/or warranties set out in this clause cease to be accurate in any respect at any time during the term of this Contract; or
- c) clause 3.10.3 applies,

OVHcloud, in its discretion, shall be entitled to terminate all or part of this Contract, by providing written notice to the Client upon such terms and with such effect as specified by OVHcloud in such written notice. OVHcloud reserves the right to refuse Orders submitted (a) from countries subject to Sanctions, or (b) by citizens of those countries or individuals subject to Sanctions.

**3.11. Third Party Products.** Subject to specific commitments undertaken within the scope of the applicable Specific Terms of Service, (a) OVHcloud is not responsible for Third Party Products made available within the scope of the Services which may contain technical errors, security vulnerabilities, incompatibilities or instabilities, and offers no guarantee for the Third Party Products made available by OVHcloud to the Client in the provision of the Services (including all related information and items such as software, systems, applications, etc.), and (b) the Client is only authorised to use the Third Party Products made available to it by OVHcloud in accordance with the terms of the Contract, and in particular is forbidden from decompiling, accessing the source code, reinstalling on any other infrastructure software or systems made available to it. The Client uses the Third-Party Products entirely at its own risk, in accordance with these Terms of Service, and is responsible to ensure that such Services are suited to its needs and the purposes for which it uses them.

**3.12. Continuity and Reversibility of Services.** Unless provided otherwise in the Specific Terms of Service, the termination of Services for any reason whatsoever (in particular, the termination or non-renewal of the Contract, failure to comply with the Terms of Service, etc.), as well as certain operations to update or reinstall the Services, shall automatically result in the irreversible deletion of all Content (including information, data, files, systems, applications, websites, and other items) that is reproduced, stored, hosted, collected, transmitted, distributed, published and more generally used and/or operated by the Client within the scope of the Services, including any potential backup. Before the termination or expiry of the Services, and before proceeding with any delete operations, update or reinstallation of Services, the Client is solely responsible to perform any operations (such as backup, transfer to a third party solution, Snapshots, etc.) which are necessary to the preservation of its own Content. Upon request from the Client, and subject to the stipulations of the article on "Confidentiality" below, OVHcloud shall provide any technical information concerning the Services which may facilitate reversibility operations and the Client's Content recovery. Such provision of assistance may result in additional charges for time worked, based on the financial terms available on the OVHcloud Website or upon request to OVHcloud Support. However, OVHcloud does not proceed to any operation of restitution or Client's Contents migration. Such operations are under the Client's exclusive responsibility. With the exception of any data which OVHcloud must preserve in accordance with applicable laws and regulations, the data referred to in article "OVHcloud processes" below, and any data necessary for the defence of its rights, OVHcloud undertakes not to keep a copy of the Client's data following the termination of Services, unless otherwise agreed by the Parties or provided otherwise in the applicable Specific Terms of Service.

**3.13. Penetration Tests.** The Client is authorised to carry out penetration tests on the Services (hereinafter "Penetration Test(s)") by itself or by a duly appointed third party auditor of its choice. The performance of these operations does not require OVHcloud to be notified. These Penetration Tests shall be carried out in accordance with the laws and regulations in force. The Client shall obtain the authorization of the



Users and rights holders of the scope targeted by the test. The conditions whereby the Client entrusts the third party auditor with the performance of the Penetration Tests are the subject of a separate agreed concluded between the Client and the auditor, and include all the conditions of this article. The Client declares and guarantees to OVHcloud that all the conditions for conducting the Penetration Tests stipulated herein will be respected, including by the auditor who acts under the full responsibility of the Client.

Under no circumstances shall the Penetration Tests (a) target other OVHcloud target elements and OVHcloud Infrastructures other than those used exclusively by the Client (including but not limited to OVHcloud shared infrastructure, networks and services), (b) disrupt the proper functioning of the Services and OVHcloud infrastructure and networks and/or (c) have any impact on the Services, resources, networks and infrastructure provided by OVHcloud to other clients. Any attempt to intrude into environments or systems used by other OVHcloud clients is expressly prohibited.

The Client is solely responsible for all consequences that may result from the performance of the Penetration Tests, including when they are carried out by a third party auditor. In particular, it is the Client's responsibility to carry out or to have carried out in advance, and under its entire responsibility, all backups necessary to enable, in the event of an incident occurring during the Penetration Tests, to restore and to be able to continue to use the target elements of the Penetration Tests (systems, applications, data, etc.).

The Client is informed that if, within the framework of the Services, protection mechanisms, such as systems to prevent the sending of fraudulent or massive mail (SPAM) or against computer attacks by denial of service (DOS or DDOS), have been put in place, these mechanisms will not be deactivated within the framework of the Penetration Tests, and may therefore result in the unavailability of the Services. The Client is responsible for informing any person likely to be affected by such unavailability.

At the end of the Penetration Tests, a written audit report is drawn up. The audit report will be communicated to OVHcloud upon first request or whenever it is of interest to OVHcloud (in particular in the event of a flaw or vulnerability in OVHcloud's Services or Infrastructures, or that could impact other OVHcloud clients).

The audit report, its contents, and more generally all information disclosed or collected in the course of the audit and concerning, directly or indirectly, OVHcloud, are considered strictly confidential, and may under no circumstances be published or disclosed to third parties without OVHcloud's prior written consent.

In the event of non-compliance by the Client and/or the third party auditor with all or part of the terms and conditions of this article, OVHcloud reserves the right to immediately suspend access to its Services, without prejudice to any damages OVHcloud may claim.

#### **4. MEASURES FOR THE PREVENTION OF SPAMMING FROM OVH'S NETWORK**

- 4.1. Measures of traffic monitoring.** OVHcloud shall implement a system of technical measures intended to prevent the dispatch of fraudulent emails and spam from its Infrastructure. OVHcloud shall monitor outgoing traffic from the Service towards port 25 (SMTP server) on the Internet, which shall involve monitoring traffic by means of automatic tools. The outgoing traffic referred in this paragraph shall be monitored by OVHcloud with a delay of a few seconds, rather than being filtered or intercepted. These operations shall be conducted by OVHcloud concurrently and not, under any circumstances directly between the Services and the internet. OVHcloud shall not conduct any tagging of e-mails, and shall not modify e-mails sent by the Client in anyway whatsoever. No information shall be stored by OVHcloud during these operations aside from statistical data. The operation in this paragraph shall be conducted

regularly and in a fully-automated manner by OVHcloud and the Client acknowledges that no human intervention is involved during the monitoring of traffic to port 25 (SMTP port).

- 4.2 Blocking e-mails identified as spam.** In the case of outgoing traffic from the Client's server, including e-mails, being identified as spam or fraudulent e-mails, OVHcloud shall inform the Client by e-mail and block the Server's SMTP port.
- 4.3. Unblocking terms.** The Client may request unblocking of the SMTP port through their Management Interface. Any new e-mail identified as spam will entail a new blocking of the SMTP port by OVHcloud for a longer period to be determined at OVH's reasonable discretion. On the occurrence of OVHcloud's blocking the SMTP port for a third time, OVHcloud reserves the right to deny any new request for the unblocking of the SMTP port.
- 4.4 Data.** OVHcloud shall not keep any copy of e-mails sent from the Service's SMTP port, even when they are identified as spam.

## 5. MITIGATION (protection against DOS and DDoS attacks)

- 5.1 Protection Measures.** OVHcloud shall implement protection against DOS and DDoS-type (Distributed Denial of Service) hacking attempts provided that these attacks are conducted in a manner reasonably considered to be serious enough by OVHcloud to justify such protection. In implementing such protection, the OVHcloud shall use reasonable endeavors to ensure that the operation of the Client's Services is maintained throughout the duration of a DOS or DDoS attack. The function provided in this article involves monitoring the traffic sent to the Client's Services from outside OVHcloud's network. The traffic identified as illegitimate shall then be rejected by OVHcloud prior to reaching the Client's Infrastructure, thus allowing legitimate users to access the applications offered by the Client in spite of the attack.
- 5.2. Scope of the protection.** The protection measures outlined in this article shall not apply in the case of attacks such as SQL injection, brute-force, abuse of security vulnerabilities, or attacks of a similar nature to the latter. In such cases, the Infrastructures and the Service may be temporarily suspended and unavailable. As a result of the high technicality of the Service, certain attacks may not be detected by the protection measures implemented by OVHcloud. The protection measures outlined in Articles 6.1 and 6.2 shall not apply in the case of attacks such as SQL injection, brute-force, abuse of security vulnerabilities, or attacks of a similar nature to the latter. In such cases, the Infrastructure and the Service may be temporarily suspended and unavailable. Given the nature of a potential DOS or DDoS attack and their complexity, OVHcloud shall implement different levels of traffic protection in order to preserve their Infrastructure and the Services.
- 5.3. Detection of the attack.** The mitigation of a DOS or DDoS attack is activated only at the time of the detection of the attack by the OVHcloud's tools and for a non-fixed period, and deactivated only once the attack and illegitimate traffic are no longer present. Thus, until the mitigation is activated, the Service shall handle the attack directly, which may lead to the temporary unavailability of the Service. While mitigation is activated, OVHcloud shall not guarantee the accessibility of the Client's applications but it shall endeavour to limit the impact of a DOS or DDOS attack on the Client's Services and on OVHcloud's Infrastructure. If, in spite of the activation of mitigation, a DOS or DDOS attack is of such a nature as to adversely affect the integrity of OVHcloud's Infrastructure or the infrastructure of the other Clients of OVHcloud, OVHcloud shall strengthen its protection measures which may lead to the deterioration of the Client's Services or impact its availability for which OVHcloud shall not be liable.



- 5.4. Client's configuration.** Where part of the traffic generated by a DOS or DDOS attack is not detected by the OVHcloud's equipment and reaches the Client's Services, the effectiveness of the mitigation shall also depend on the appropriate configuration of the Client's Services. In this regard, the Client must ensure that it has the adequate resources to administer the configuration of the Client's Services properly. The Client shall be solely responsible for ensuring it secures its Services, implementing security tools (firewall, etc.), periodically updating their system, backing up their data and for ensuring the security of their software (scripts, codes etc.).

## 6. OVHcloud SUPPORT

- 6.1. OVHcloud Support team.** The OVHcloud Support team is responsible for handling Incidents which may occur in relation to the Services, and to provide the Client, upon request, with information regarding the characteristics and Terms of Services. Provided the other levels of Support referred to in article 4.4 below, OVHcloud Support is available in English only and information regarding the Services is available during business hours only. OVHcloud infrastructures are monitored 24/7, 365 days a year. In order to ensure the continuity of such monitoring on a 24/7/365 basis, OVHcloud reserves the right to subcontract part of the Support in accordance with the section "Subcontract".
- 6.2. Recourse to OVHcloud Support.** The Client may contact the OVHcloud Support by email, using a special form available in the Management Interface, or by telephone. Nevertheless, during non-business hours, the OVHcloud Support team can only be reached by email or through the Management Interface. OVHcloud shall create a ticket ("Incident Ticket") for each request or Incident report received. The Client will be informed of the creation of the Incident Ticket and its corresponding number. The Client can access the history and status of its requests and Incidents reported through its Management Interface. The Client undertakes not to make use of the OVHcloud Support wrongfully. Before resorting to the OVHcloud Support, the Client must first consult the resources and information available on the OVHcloud Website (user guides, use cases, product documentation, etc.), and in its Management Interface (reporting, monitoring, etc.). The Client shall not (a) contact the OVHcloud Support for services or products that it has not contracted from OVHcloud cloud directly or(ii) place the OVHcloud Support teams in direct contact with its own clients or any other party external to the Contract. OVHcloud reserves the right to refuse to accept any request which does not meet the aforementioned conditions. The Client undertakes to adopt behaviour that is appropriate, cordial and respectful in its interactions with OVHcloud Support. OVHcloud reserves the right to no longer reply to the Client's requests and to immediately terminate the Contract in case of abusive, outrageous, or degrading behaviour. Furthermore, such behaviour may result in legal action taken against the Client, for which purposes OVHcloud may resort to any means of evidence which it deems useful and relevant (extracts of communications with the Client, screenshots, emails, recording of telephone calls, etc.). Subject to the other levels of Support referred to in article 4.4 below, OVHcloud Support is included in the price of the Services.
- 6.3. Incident handling.** In case of malfunction of the Services, the Client shall firstly perform the technical tests recommended on the OVHcloud Website. In the event these tests do not resolve the Incident, the Client may report the Incident to the OVHcloud Support as set out above and provide as much information as possible to facilitate a proper diagnosis. When an Incident is reported, OVHcloud Support shall carry out the necessary investigation to identify the cause of the observed malfunction and establish a diagnosis. The Client agrees to remain available at all times in order to collaborate with OVHcloud on a proper diagnosis and resolution of the Incident, in particular by providing OVHcloud with any additional information, and by performing all of the necessary tests and verifications. Within the

scope of Incident handling, OVHcloud and its Partner Companies are expressly authorized by the Client to connect to the Client Services at both the hardware and software levels, in order to take any action that is necessary to perform a diagnosis. This connection may require the Client to perform an action on its Service. OVHcloud shall keep the Client reasonably wellinformed of the progress of the operations. If OVHcloud establishes that its Services are available and functioning properly, or that the existence of the Incident cannot be confirmed, or that the Incident does not fall under the responsibility of OVHcloud, OVHcloud shall inform the Client accordingly. In this case, the time spent by OVHcloud on performing the diagnosis and assisting the Client may be charged to the Client as an additional service provided, based on the fee schedule available on the OVHcloud Website or provided to the Client. OVHcloud reserves the right to refuse any assistance if it ascertains, during its investigation, that the Client is using the Service in violation of the Contract or of any applicable law or regulation. If the Incident appears to fall under OVHcloud's responsibility, OVHcloud shall finish the diagnosis and work to re-establish the availability of the impacted Services. In this case, the work performed by OVHcloud shall not result in any additional charges. The diagnosis shall be established by OVHcloud using any means necessary, and particularly based on exchanges between the Parties and data from the OVHcloud information system (such as login data) which the Client hereby expressly agrees may be admissible and fully enforceable. Subject to any applicable Specific Terms of Service and other levels of Support referred to in article 4.4 below, OVHcloud does not provide any warranty as to the duration of repairs or time frames for the resolution of Incidents within the scope of the OVHcloud Support.

- 6.4. Other levels of Support.** In addition to the OVHcloud Standard Support described above, OVHcloud offers other levels of Support which allow the Client to benefit from additional services and levels of commitment. The terms and conditions for these Support levels are described in Specific Terms of Service and corresponding documentations available on the OVHcloud Website or upon request to OVHcloud Support.

## 7. RESPONSIBILITY

- 7.1. Ability.** Each of the Parties warrants and represents that it has full power and authority to enter into and perform the Contract. In particular, the Client and OVHcloud represent and warrant that it holds all of the authorisations, skills and knowledge (particularly of a technical nature) which enable them to respectively use and provide the Services in accordance with the terms and conditions of the Contract.
- 7.2. Responsibility of OVHcloud.** In cases where the applicable Specific Terms of Service include commitments from OVHcloud to particular levels of service, the corresponding payments or credits which may be due by OVHcloud to the Client shall constitute the Client's sole and exclusive remedy for OVHcloud's failure to comply with the level of service committed to in the relevant Specific Terms of Service and OVHcloud's entire liability for failing to meet the relevant level of service. In the absence of an applicable commitment to a given level of service under no circumstances shall the total aggregate liability of OVHcloud (Affiliates, subcontractors and providers included) to the Client (however arising) under or in relation to this Contract, including (but not limited to) liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), breach of statutory duty, or otherwise, exceed (i) the total amount of sums paid by the Client to OVHcloud for the impacted Services over the course of the six (6) months prior to the Client's claim for compensation or (ii) the direct prejudice suffered by the Client if such prejudice is lower. Under penalty of foreclosure, the period time for suit against OVHcloud will not exceed two years from the date on which the Client knows of the damage.

**7.3. Limitation of liability.** Under no circumstances shall OVHcloud be liable under or in connection with this Contract for any:

- (A) use of the Services by the Client or a third party which is in breach of the terms and conditions of the Contract;
- (B) non-execution, failure, malfunction, interruption or unavailability of the Service;
- (C) indirect or consequential loss including loss of business, commercial damage, loss of orders, operational losses, loss of revenue, loss of reputation, harm to the company's image, loss of actual or anticipated profits, loss of contracts or clients (for instance, unwanted disclosure of confidential information relating to such clients due to system failure or hacking, third party claim against the Client);
- (D) loss, disclosure or illicit or fraudulent use of Users' authentication credentials by the User or any third party in compliance with the applicable provisions;
- (E) suspensions of access, or temporary or permanent suspension of operated Services in accordance with article 3 of these General Terms of Service (notably a request issued by a legal authority or a competent judicial authority);
- (F) loss of, damage to, alterations of all or part of the Content (including information, data, applications, files or other items) hosted on the Infrastructure and noting that OVHcloud is not responsible to perform the continuity of the Client's activities and notably backup operations;
- (G) lack of suitability of the Services to the needs of the Client (including in relation to the sensitivity of the relevant data);
- (H) security incidents related to the use of the Internet, particularly in case of loss, alteration, destruction, disclosure or unauthorized access of Client data or information on, or from, the Internet; AND
- (I) impairment of systems, applications and other items installed by the Client on the Infrastructure.

OVHcloud DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED TO THE CLIENT. THE CLIENT ACKNOWLEDGES THAT OVHcloud, ITS GROUP MEMBERS, AND THEIR RESPONSIBLE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND SUPPLIERS SHALL NOT BE LIABLE FOR DAMAGES RESULTING FROM THE CONTRACT EXCEPT FOR ANY DIRECT CONSEQUENCES CAUSED BY THE PERSONAL FAULT OF OVHcloud OR ITS REPRESENTATIVES. THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

**7.4. Responsibility of the Client.** The Client bears the risks related to its activities and is sole responsible for the use of the Services made available by OVHcloud and for compliance with the Terms of Service in effect, including procuring that any third party that uses the Services, or on whose behalf the Service are used, comply with such Terms of Service. In particular, the Client is responsible for (a) ensuring the Services ordered are suited to its needs and the needs of third parties for whom or on whose behalf they are used, (b) the Content, such as information, data, files, systems, applications, software, websites, and other elements which may be reproduced, hosted, installed, collected, transmitted, distributed or published, and more generally used and/or operated within the scope of the Services, as well as (c) the management and use of said Content (in particular their verification, validation, updating, deletion, backup, and along with any measure designed to protect against the loss or alteration of the Content), including when the Content belongs to a third party or is used or operated by or on behalf of a third party, and (d) compliance with applicable laws and regulations. When the Client uses the Services in the scope of a business activity, or when acting on behalf of a third party, it undertakes to take out a third-party insurance policy, from an insurance company known to be creditworthy, covering the entire amount of damages which may be imputed to it, and undertakes to maintain that insurance policy (or any other equivalent insurance) for the entire duration of the Contract.

- 7.5. Client guarantee.** Each Party guarantees it practices activities complying with the regulation in effect. The Client guarantees notably OVHcloud against any consequences resulting from (a) the use or exploitation of illicit content within the scope of the Services, (b) fraudulent use of the Services or use that does not comply with the Terms of Services in effect or any applicable laws and regulations, (c) the use of Services made in violation of third party rights, (d) the lack of suitability of the chosen Services to its needs or the needs of its Users and of any third party on whose behalf the Services are used, or (e) the loss of, or unauthorized or fraudulent use of, Users' authentication credentials. The Client undertakes to take appropriate action in the event of any action, claim or complaint by a third party relative to the Content and/or the Terms of Service, including those by legal or judicial authorities, and to indemnify and hold harmless OVHcloud against any damages, losses and expenses which may result therefrom (including legal judgements, reasonable legal defence costs, etc.).
- 7.6. Third Parties.** Under the present Contract, OVHcloud makes no commitment towards any third parties, including Users, and no stipulation of the Contract may be interpreted as creating third party beneficiaries of the present Contract (including but not limited to under the Contracts (Rights of Third Parties) Act 1999). The Client is solely responsible for its relationship with any third parties (notably the Users of the Services), and shall indemnify and hold harmless OVHcloud against any action, claim or complaint taken by a third party which implicates the OVHcloud Services. The Client undertakes to notify OVHcloud in writing, as quickly as possible, of any claims, complaints and/or legal action taken by a third party which implicates the OVHcloud Services, detailing the subject matter of the claim as well as any useful information so that OVHcloud may communicate to the Client any items in its possession which may be useful. OVHcloud reserves the right to take part into such litigations.
- 7.7. Force majeure** Neither Party may be held liable on the basis of a failure to meet its contractual obligations resulting, directly or indirectly, from unforeseeable events having the characteristics of force majeure as defined in Article 1470 of the Civil Code of Quebec and by case law. The Parties declare that force majeure (i) includes strikes, including strikes by the personnel of a subcontractor of one of the Parties, acts of vandalism, war or threat of war, sabotage, terrorist acts, fires, epidemics, earthquakes, floods and explosions, as well as power cuts beyond the control of the affected Party,. In such circumstances, the Affected Party shall inform the other Party as quickly as possible in writing, detailing the circumstances and the expected duration of the Force Majeure Event, and shall keep the other Party regularly informed of the status of the situation. If, despite the efforts of the Affected Party in breach, the period of delay or non-performance continues for more than thirty (30) consecutive days, the Party not affected may terminate without liability whatsoever all or part of the Services affected by the Force Majeure Event [with immediate effect] by giving notice to the Affected Party.

## 8. FINANCIAL CONDITIONS

- 8.1. Price of Services.** The prices of the Services invoiced to the Client are those in effect at the time of invoicing, as published on the OVHcloud Website. The prices may also be communicated upon request sent to OVHcloud Support. Unless stipulated otherwise, all prices are in US dollars. OVHcloud offers different types of rates depending on the type of Service (monthly flat-rate, yearly flat-rate, per use pricing, etc.). These rates may be linked to a commitment to a particular period of use and/or a specific method of invoicing. Should several types of prices be available for the same Service, the Client may select the one of its choosing when submitting its Order. All taxes applicable to the Services (excluding taxes on OVHcloud revenue) shall be added to the price of the Services and due by the Client without this being deemed a change in the price as envisaged by article 6.2 of this Contract. In the absence of a special pricing scheme, the prices of the Services shall include the cost of acquisition of the licenses and

rights to use the tools, software and Operating Systems used by OVHcloud and/or which are made available to the Client by OVHcloud within the scope of the Services. The Client is responsible for acquiring and fulfilling its obligations in respect of all licenses and usage rights that are necessary to operate or make use of the Content within the scope of the Services. The methods for calculating the price of the Services, as well as the billing units, are defined on the OVHcloud Website and in the applicable Specific Terms of Service. The Client is responsible for taking note of this before submitting its order. Each billing unit begun shall be invoiced and due in full, even when it is not totally used. Some Services shall incur additional installation or commissioning costs.

**8.2. Changes to prices.** OVHcloud reserves the right to change its prices at any time. Pricing changes are immediately applicable to any new Orders. For Services in use at the time of an increase in their price, the Client shall be informed of the change by email at least thirty (30) calendar days in advance. In such a case and to the extent permitted by the laws, the Client has the right to terminate without penalty the impacted Services within seven (7) calendar days upon the notification of the said price increase. Such termination shall be notified by registered letter with acknowledgement of receipt or through a specific form provided in the Management Interface. In the absence of said termination, the Client shall be deemed to have accepted the new prices. The aforementioned termination right is not applicable in case of price increase due to unpredictable circumstances making the execution excessively expensive for OVHcloud, which had not agreed to assume the risk.

**8.3. Invoicing.** The Services shall be invoiced on the basis of Client Orders and consumption of Services as established by OVHcloud in its information system, which shall be deemed as admissible and fully enforceable to the Client. The periodicity (monthly, yearly, or other) of invoices and the timing of their issuance (upon ordering or in arrears) varies from one Service to another. The terms of invoicing of the prices of the Services are defined on the OVHcloud Website and in the applicable Specific Terms of Service. The Client is responsible for taking note of these before submitting its Order. After each payment, OVHcloud shall send the Client an invoice. The Client expressly agrees that this invoice shall be sent to it electronically. The invoice is sent to the Client by email and/or made available to the Client through the Management Interface. The Client is responsible for keeping a copy of the invoice in accordance with regulations in effect. Invoices made available to the Client in the Management Interface shall remain available for a period of twelve (12) months following the date made available.

**8.4. Payment.** Invoices are payable on receipt, it being understood that invoices are issued either at the time of the Order, or in arrears, depending on the Service. The Client is responsible for selecting its desired payment method from among the available payment methods in the Management Interface.

The available payment methods may vary from one Service to another and are published on OVHcloud Website. The Client is responsible for taking note of this before submitting its Order. In relation to Services payable in arrears, OVHcloud reserves the right to invoice the Client for said Services before the end of a calendar month in the event that the total Services consumed by the Client during the month in question reach a significant amount. The Client is fully responsible for payment of Services in accordance with the article "Financial Conditions". The Client undertakes to select a valid payment method in its Client Account, and to dispose of the necessary funds to render payment for the Services. To the extent permitted by the laws,, the Client remains liable to settle the price in its entirety. Consequently, (i) the Client shall have no claim to any reimbursement resulting from the non-use, the partial-use, suspension or cessation of the use of Services before the end of the Period of Use and (2) in the event of split payment(s) (e.g. monthly, yearly installments), the Client remains liable to settle the price in its entirety for the whole of the commitment period subscribed to at the time of the Order. Those provisions is without prejudice to the Client's right to engage OVHcloud's liability in accordance with article "Liability" hereafter in case such situation results from OVHcloud's failure to fulfil its obligations.

**8.5. Default or late payment.** In case of default or late payment, including partial payment, OVHcloud may charge the Client late payment penalties equal to 2% calculated monthly (26.82% per year) from the day following the payment due date and OVHcloud. Furthermore, any default or delay of payment (including partial) of the sums due by the Client under the Contract which persists for more than (4) days after notification of default or delay of payment sent to the Client by email, shall result by right, and without requiring any additional notification or formal notice, in (a) the immediate demand of all of the sums remaining due by the Client under the Contract regardless of their payment terms, and (b) the right of OVHcloud to decide to immediately suspend and without prior notice all or part of the Client Services (including those which have been paid for), to refuse any new Order or renewal of Services to the Client and to terminate all or part of the Contract . In case of default or late payment, business Clients shall be liable to pay a fixed recovery fee of sixty (60) US dollars, without prejudice to OVH's right to demand, upon supporting documents, additional compensation in cases where the recovery fees are greater than the amount of said fixed recovery fee.

**8.6. Contestation.** In the event of any disagreement regarding invoicing or the nature of the Services, the Client must notify OVHcloud Support through its Management Interface within one (1) month of the date the invoice was issued. In the absence of said notification, and without prejudice to the Client's right to contest the invoice later on, the Client shall be liable to settle all unpaid invoices according to the terms of the Contract. In case of failure to invoice the Services correctly or in the appropriate timeframe, OVHcloud reserves the right invoice or correct the invoicing at any time, subject to any mandatory applicable limitation.

## 9. DURATION, RENEWAL AND TERMINATION OF SERVICES

**9.1. Duration of Services.** The Contract is entered into for an indeterminate period of time and remains in effect so long as the Client uses the OVHcloud Services. The duration for which the Client undertakes to use the ordered Services is that which is applicable to the rate selected by the Client when submitting its Order (the "Period of Use"). In case of flat-rate or fixed sum payments (monthly, annual or other), and to the extent permitted by the laws, and section "Termination for breach", the Client undertakes to use the Services during the entire corresponding period. In case of payment per use, the Services are made available for an indeterminate period of time, and the Client may terminate its use of the Services at any time in accordance with the procedures in effect.

**9.2. Renewal of Services.** The terms for the renewal of Services vary from one type of Service to another, as set out in the Specific Terms applicable to such Services. Some of these renewed automatically ("Auto-Renew") while others are renewed upon payment in advance by the Client. In cases where multiple options exist, the Client is responsible for selecting the renewal method of its choosing and the initial commitment period. For certain Services, the Auto-Renew mode is activated by default. Requests for reissued payment are automatically rejected in case of default in payment or irregular payment (incorrect amount, incomplete payment, payment which does not include the required references, or issued using a method or procedure not accepted by OVHcloud). In case of payment reissued by cheque, the Client is responsible to reissue payment early enough for the cheque to be effectively received by OVHcloud before the expiry date of the Services. OVHcloud reserves the right to terminate the renewal, notably, with a reasonable prior notice, in case of a Service's disappearance.

**9.3. Termination for breach.** Without prejudice to the other cases of termination provided in the Contract, and without affecting any other right or remedy available to it, either Party may terminate this Contract with immediate effect by giving written notice to the other Party if the other Party commits a breach of any term of this Contract (including non-compliance with financial terms and/or provisions of the



Article 3 Terms of use of the Services of these General Terms of Service) which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of seven (7) calendar days after being notified by registered letter with acknowledgement of receipt to do so. Notwithstanding the foregoing, in case of malicious, illegal or fraudulent use of the Services, or use made in violation of the rights of a third party, OVHcloud shall be entitled to terminate the relevant Services or the Contract in its entirety with immediate effect by email and without prior formal notice. The present paragraph shall not be considered to be a waiver of OVHcloud's right to suspend or interrupt the Services in accordance with the provisions of the Contract, particularly in case of non-compliance by the Client with the Terms of Service. Terminations for breach are without prejudice to any damages which may be claimed by the injured party.

## 10. CONFIDENTIALITY

**10.1. Commitments.** Each of the Parties undertakes, as concerning the confidential information of the Party of which it is recipient or to which it has access within the scope of the execution of the present Contract, to (a) only use said confidential information for the sole purposes of the execution of the Contract, (b) preserve the confidentiality of said information with the same degree of care as if it were its own confidential information, and (c) give access to said confidential information only to their respective associates and Affiliates who need to know the information as part of their function on the condition that these recipients have received prior notification of the confidential nature of said information and are linked by a confidentiality agreement at least as equivalent as this Contract. Each Party is also allowed to communicate the other Party's confidential information to its counsels as long as they belong to a regulated profession (e.g. lawyers, barristers, certified accountants and auditors). Each Party forbid itself to divulgate the other Party's confidential information to other persons than those referred to above without the prior written consent of the other Party, and warrant the respect of the confidentiality of said data by every person to whom it divulgates it. Shall be considered confidential the Contract's provisions and all information communicated between the Parties, or to which the Parties have access in the scope of the execution of the Contract and in any form whatsoever and the nature (notably financial information and marketing, trade secrets, knowhow, information related to security and to the terms of use of the Service). To be considered as a confidential information, it is not necessary that the confidential nature of the information be mentioned on the document or other media containing the information or precised when the information is divulgated. Either Parties undertakes to comply with its obligation of confidentiality for the entire duration of the Contract as well as for a period of two (2) years from its termination, regardless of the cause.

**10.2. Exceptions.** The confidentiality commitments defined above shall not apply to information for which the recipient Party can demonstrate that (a) the recipient Party became legitimately aware of the information without being required to keep them confidential prior to the other Party having communicated the information or provided it with access to the information, or (b) the information is in the public domain or falls into the public domain during the course of the execution of the Contract by means other than a failure by the recipient Party (or persons for which it is responsible) to fulfill its confidentiality obligations under the present Contract, or (c) they were communicated to the recipient Party by a third party having the authority to disclose them and which did so legitimately, (d) they result from developments performed by the recipient Party and/or by its employees independently of the execution of the Contract, or (e) the divulgation of the said information was authorised by the other Party as provided in the Contract's provisions. Notwithstanding the preceding, each of the Parties reserves the right to disclose information received from the other Party (a) strictly within the limits necessary to defend its rights, it being noted that in such cases, the confidential information of the other Party shall be retained for the time legally required for their use as evidence, and can only be disclosed to those persons who need to know them within the course of the legal action or procedure



in question (judges, lawyers, etc.), those persons being bound by professional secrecy or otherwise by a confidentiality agreement, or (b) at the request of a competent legal or judicial authority, it being specified that in such cases, disclosure shall be strictly limited to the request of said authority, and, subject to any legal requirements or injunctions to the contrary, the recipient Party shall inform the other Party of said request.

## **11. PERSONAL DATA**

**11.1.** OVHcloud reminds the Client that, while providing the Service to the Client, OVHcloud may keep some of the Client's personal data in compliance with its regulatory and judicial obligations.

**11.2.** Information such as "last name, first name, mailing address, e-mail address, phone numbers, and IP connection addresses" shall be kept by OVHcloud during the entire term of the Agreement and up to twelve (12) months after the expiration of the Service.

**11.3.** The data transmitted by the Client shall be kept as long as deemed necessary for evidence purposes. Except as otherwise provided in the Specific Terms and Conditions, OVHcloud shall not disclose nor sell the Client's personal data.

**11.4.** The Client agrees that his/its personal data may be stored, handled and transferred by OVHcloud to its affiliates, who shall only have access to such data in order to perform essential functions in the provision of the Service, all in strict compliance with the Client's privacy rights.

**11.5.** The Client also acknowledges that OVHcloud may communicate the Client's information at the request of administrative, regulatory or judicial authorities.

## **12. GENERAL PROVISIONS**

**12.1. Severance.** If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this article 12.1 shall not affect the validity and enforceability of the rest of this Contract. If any provision or part of provision of this Contract is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**12.2. Titles.** The article and paragraph headings are for convenience only and shall not affect the interpretation of this Contract.

**12.3. Waiver.** No failure or delay by a Party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**12.4. Entire agreement.** The Contract is made up of the Terms of Services which constitute the entire agreement between the Client and OVHcloud in relation to its subject matter, excluding any Client's

general terms and conditions. OVHcloud may, at any time and by right, amend the Terms of Service in effect. Such amendments are immediately applicable to every new Orders. About those Services in use, the Client shall be notified via email or through its Management Interface of any amendment to the Terms of Service in effect. Changes to the Terms of Service are in effect within thirty (30) calendar days from the date the aforementioned notification is sent. Notwithstanding the foregoing, any change to Third Party Product Terms of Use and any implementation of a new regulation may be immediately applicable to the extent OVHcloud does not control such events. To the extent permitted by the laws,, in cases where new Terms of Service are unfavourable to the Client, the latter may, terminate the Services affected by the notified amendment within thirty (30) calendar days from the new Terms of Services are in effect. Such termination shall be notified via registered letter with acknowledgement receipt or the form provided in the Management Interface.

**12.5. Language.** The Parties hereto have specifically requested that this letter agreement and any documents relating thereto be written in the English language. Les parties aux présentes ont expressément exigé que la présente convention ainsi que tout document y afférent soit rédigé en anglais.

**12.6. No Partnership or Agency.** Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party the agent of the other Party, or authorise either Party to make or enter into any commitments for or on behalf of the other Party. Each Party confirms (i) it is acting on its own behalf and not for the benefit of any other person and (ii) it is responsible for all of its actions, and alone assumes all of the risks related to its activity.

**12.7. Assignment.** Neither Party shall assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Contract without the prior written consent of the other Party Notwithstanding the foregoing, each Party shall be entitled to transfer all or part of the Contract to its Affiliates. In this case, it shall notify the other Party in writing as soon as reasonably practicable. The following operations are deemed not to fall within the scope of application of the present article, and are therefore authorised: (a) changes in shareholders, changes of holdings, or change of control of either Party, and (b) operations such as mergers, acquisitions, sale of business assets, divestments, or any other operations which involve a transfer of the assets of either Party. If one of the Parties performs one of the operations mentioned in point (a) or (b) above, it shall inform the other Party. If the operation is realised to the benefit of a direct competitor of the other Party or a party with whom the other Party has a pre-existing dispute that other Party shall have the right to terminate the Contract, and no damages shall be due.

**12.8. Notices.** For all exchanges of information by email, the date and time of the OVHcloud server shall be accepted by the Parties. This information shall be retained by OVHcloud for the entire duration of the contractual relationship and for the three (3) following years. Subject to the other means of communication and recipient mentioned in the Contract, all notifications, formal notices and other communications provided for in the Contract shall be deemed as having been validly delivered if they are sent by to:

For OVHcloud: By registered letter with acknowledgment of receipt to the address

OVH Australia PTY LTD LEVEL 12, 90 ARTHUR STREET NORTH SYDNEY NSW 2060  
For the Client: By registered letter with acknowledgment of receipt the postal address provided by the Client in its Client's account or by email address

This article does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**12.9. Advertising and promotion.** Unless otherwise decided by the Client via the form available for such purpose in its Management Interface, OVHcloud is allowed to make mention of its commercial relationship with the Client in its usual course of business towards clients and prospects. Any other mention by OVHcloud about the Client, and any other use of signs (logos, trademarks, etc.) notably for advertising purposes, exhibitions, conferences and in specialised publications for market professionals, as well as in its brochures, commercial documents and OVHcloud website is submitted to Client's prior consent.

**12.10. Admissible evidence.** It is expressly agreed that the data of the OVHcloud information system or of its subcontractors, such as login logs, consumption records, order and payment summaries, Incident or other reports, can be used as evidence vis-à-vis the Client, and are deemed as admissible including in the context of legal disputes.

**12.11. Computation of time frames.** Time periods shall be calculated in calendar days, and are counted starting on the next day of the event which triggers them.

**12.12.** The expiry of the term or early termination of this Contract will not affect the validity of the rights and obligations provided for in the articles "Confidentiality", "Responsibility", "Intellectual Property. Usage rights ", "Notices", "Jurisdictional Competence and Applicable Law" of the Contract which, by their nature or as a result of specific provisions, extend beyond the term or this termination, both for the Parties and for their assignees, until their respective expiry dates.

**12.13** The terms in this Agreement that exclude or limit OVHcloud's liability will apply only to the extent permitted by law. Provisions of the Competition and Consumer Act 2010 (Cth) (as amended) and other statutes from time to time in force cannot be excluded, restricted or modified or can only be restricted or modified to a limited extent. This Agreement must be read and construed subject to any statutory provisions. If any such statutory provisions apply, then to the extent to which OVHcloud is entitled to do so, its liability under those statutory provisions will be limited at its option to either: (i) supplying the Services again or (ii) paying for the cost of supplying the Services again.

### **13. JURISDICTIONAL COMPETENCE AND APPLICABLE LAW**

**13.1.** Jurisdictional competence. To the extent permitted by the laws, the Parties agree that all legal proceedings to be undertaken shall be instituted and heard before the courts having jurisdiction in the judicial district of New South Wales where the Parties elect domicile.

**13.2.** Applicable law. This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including disputes or claims relating to non-contractual obligations) shall be governed by and construed in accordance with the laws of New South Wales.

### **14. DEFINITIONS**

**"Affiliate"** means any company controlled by OVHcloud, that controls OVHcloud or with which OVHcloud is under the joint control of another third company. The control means the possession, directly or indirectly, of: (a) the right to determine de facto, directly or indirectly, decisions relating to the strategy or management of any entity; or (b) the right to elect the majority of the members of the board of directors or members of an equivalent management body, in each case (a) and (b) regardless of the source of such rights (voting rights, contract or

otherwise), and “controlled” and “controlling” shall be interpreted accordingly. The control is presumed when the entity directly or indirectly holds more than 40% of the voting rights and that no other shareholder directly or indirectly owns a larger percentage of the voting rights whether directly or indirectly. Companies domiciled in the United States of America are explicitly excluded from the scope of this Contract.

“**Client Account**” (or **Nic** or **Nichandle**) means reference Account/Client login allowing the Client to manage all its Services and to subscribe to additional Services.

“**Content**” means information, data, files, systems, applications, websites and other items which are reproduced, hosted, collected, stored, transmitted, distributed, published, and more generally used and/or operated by the Client within the scope of the Services.

“**Incident**” means any event which causes or is likely to cause an interruption or a reduction in the continuous operation of the Infrastructure and/or services provided to the Client by OVHcloud.

“**Infrastructure**” means all physical and virtual elements belonging to the OVHcloud Group or under its responsibility, made available by OVHcloud in the context of the Services, and which may consist in particular of network, bandwidth, physical resources and software and/or applications.

“**Lists de Sanctions**” means List of persons, companies and entities sanctioned pursuant to Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing as amended by Directive 2018/843 of 30 May 2018 or pursuant to other legislative acts in the field of the fight against money laundering and terrorist financing.

“**Management Interface**” or “**Manager**” means interface made available by OVHcloud, accessible remotely after authentication (by login and password).

“**Order**” means any order for Services submitted by the Client.

“**OVHcloud Elements**” means all elements (including software, data, Infrastructure, documents, etc.) made available to the Partner by OVHcloud as part of the Services and under this Agreement.

“**OVHcloud Support**” means OVHcloud team responsible for assisting the Client and handling Incidents.

“**OVHcloud Website**” means OVHcloud company’s website “ovhcloud.com” or any other derivative website belonging to one of its Affiliates.

“**Services**” means any services, such as the use of products, OVHcloud Elements (infrastructure, network, etc.) and access to support, provided by OVHcloud to Client under the Contract.

“**Specific Terms of Service**” means a document describing one or more Services provided by OVHcloud, setting out the terms and conditions of performance and use specific to such Service(s), and published on the OVHcloud Website or available to the Client upon request addressed to OVHcloud Support.

“**Terms of Service**” means set of documents applicable to an Order comprised of, in particular, but not limited to General Terms of Service, Specific Terms of Service applicable to relevant Services in their latest version in force and published on the OVHcloud Website or available to the Client upon request addressed to OVHcloud Support.

**"Third Party Products"** means any product (such as an operating system, application, firewall, or hardware component) that is developed and owned by a third party and made available to the Client by OVHcloud, or that the Client has directly or indirectly procured from such third party.

**"Third Party Product Terms of Use"** means contractual terms specific to the use of Third Party Product made available by OVHcloud within the framework of the Services.

**"Third-Party Providers"** means third parties including, in particular, but not limited to, energy providers, network providers, network interconnection point managers or collocated datacenters, material and software providers, carriers, technical providers, security company.

**"User(s)"** means the Client and any other person(s) accessing or using the Services (including access to or use of any products configured within the Services by OVHcloud, the Client, its own clients or any third party) under the responsibility of the Client.